

**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS APPROVING THE PURCHASE OF DOCUMENT IMAGING SERVICES BY PIGGYBACKING THE CITY OF SARATOGA'S CONTRACT WITH PELLE TECHNOLOGIES**

**WHEREAS**, Section I-2-3.07 of the Milpitas Municipal Code authorizes the City Council to enter into contracts without competitive bid when the Purchasing Agent determines that a piggyback purchase is in the City's best interest; and

**WHEREAS**, there are no local suppliers or contractors who could provide the same document imaging services at competitive rates; and

**WHEREAS**, a contract was awarded to Pelle Technologies by the City of Saratoga and a copy of the Request for Proposal and the resulting contract was obtained and reviewed for compliance with the City's Purchasing Ordinance by the Purchasing Agent; and

**WHEREAS**, the City's specifications for document imaging services are not materially different than those listed in the City of Saratoga's solicitation; and

**WHEREAS**, the price for Pelle Technologies document imaging services under the City of Saratoga contract is estimated to be lower than if the City made the purchase pursuant to the City's Purchasing Ordinance; and

**WHEREAS**, the price the City will pay for the document imaging services from Pelle Technologies will be the same price as in the City of Saratoga contract; and

**WHEREAS**, the contract resulting from the original solicitation is current or the solicitation is within two years from the date of the City's order; and

**WHEREAS**, no more than a 10% variation is allowed for customizing the order or for desirable option, and

**WHEREAS**, the City enters into a separate contract with the vendor selected by the originating agency, and incorporates by reference the original solicitation, terms, conditions and prices.

**NOW, THEREFORE**, the City Council of the City of Milpitas hereby finds, determines, and resolves as follows:

1. The City Council has considered the full record before it, which may include but is not limited to such things as the staff report, testimony by staff and the public, and other materials and evidence submitted or provided to it. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.
2. The City Manager is authorized to execute a separate contract with Pelle Technologies for document imaging services, which references the solicitation of the City of Saratoga, and incorporates, by reference the terms, conditions and prices in the City of Saratoga contract, for a not-to-exceed amount of \$59,992.50.

PASSED AND ADOPTED this \_\_\_\_ day of \_\_\_\_\_, 2016, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

\_\_\_\_\_  
Mary Lavelle, City Clerk

\_\_\_\_\_  
Jose S. Estevez, Mayor

APPROVED AS TO FORM:

\_\_\_\_\_  
Christopher J. Diaz, City Attorney



## PIGGYBACK AGREEMENT

This AGREEMENT is entered into this 19<sup>th</sup> day of October, 2016, by and between the City of Milpitas, a municipal corporation of the State of California (hereafter referred to as "CITY") and **Peelle Technologies**, a California corporation (hereafter referred to as "CONTRACTOR").

### **RECITALS**

WHEREAS, CONTRACTOR and the City of Saratoga originally entered into an agreement for document imaging, on July 1, 2010 (attached); and

WHEREAS, the parties aforementioned desire to open the use of their agreement to other municipalities; and

WHEREAS the practice of "Piggyback" procurement is specifically authorized by the City Municipal Code Sec. I-2-3.07 "Piggyback Procurement";

NOW THEREFORE, in consideration of the mutual covenants and conditions herein contained, the CITY agrees to enter into a separate agreement with CONTRACTOR and hereby incorporates by reference the solicitation, terms, conditions, and pricing of the original aforementioned agreement.

1. The total amount of the contract shall not exceed \$59,992.50.

This agreement is executed as of the date written above.

APPROVED BY:

CITY OF MILPITAS

PEELLE TECHNOLOGIES

\_\_\_\_\_  
Thomas C. Williams, City Manager

\_\_\_\_\_  
Signature of Authorized Representative

Approved As To Form

\_\_\_\_\_  
Printed Name of Authorized Representative

\_\_\_\_\_  
Christopher J. Diaz, City Attorney

\_\_\_\_\_  
Title of Authorized representative

Approved As To Content

Business Tax Compliance No. \_\_\_\_\_

\_\_\_\_\_  
Mike Luu, City Project Manager

**CITY OF SARATOGA  
AMENDMENT TO  
INDEPENDENT CONTRACTOR AGREEMENT**

THIS Amendment Agreement is made at Saratoga, California by and between the CITY OF SARATOGA, a municipal corporation ("City"), and **Peelle Technologies, Inc.**, ("Contractor"), who agree as follows:

WHEREAS, City and Contractor entered into an independent contractor agreement dated **July 01, 2010** ("Original Agreement"); and amended the agreement by an amendment signed by the City Manager on June 12, 2012 ("First Amended Agreement"); and

WHEREAS, City and Contractor wish to amend the Original Agreement and First Amendment to Agreement in order to extend the term by entering into this Second Amendment to the Original Agreement and First Amendment to Agreement.

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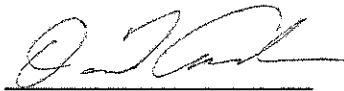
NOW THEREFORE, the parties hereto agree as follows:

1. **Amended Term.** The term of the Agreement commenced on July 1, 2010 and will extend through **June 30, 2017** or the completion of the project, whichever occurs first, unless it is extended by written mutual agreement between the parties, provided that the parties retain the right to terminate this Agreement as provided in Exhibit D to the Original Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment.

**City of Saratoga:**

By:



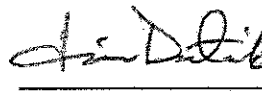
Dave Anderson,  
City Manager

6-17-2014

Date

**Contractor:**

By:

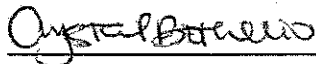


Jim Detrick,  
President

4/29/14

Date

Attest:




Crystal Bothello,  
City Clerk

6/18/2014

Date

Approved as to Form:



5/21/14

Richard S. Taylor,  
City Attorney

Date

**Attachments:**

Attachment 1 – Original Agreement

Attachment 2 – First Amendment to Agreement

**CITY OF SARATOGA  
STANDARD  
INDEPENDENT CONTRACTOR AGREEMENT**

THIS AGREEMENT is made at Saratoga, California by and between the CITY OF SARATOGA, a municipal corporation ("City"), and **Peelle Technologies** ["Contractor"], who agree as follows:

**RECITALS**

WHEREAS, City requires the services of a qualified contractor to provide the work product described in Exhibit A of this Agreement; and

WHEREAS, City lacks the qualified personnel to provide the specified work product; and

WHEREAS, Contractor is duly qualified to provide the required work product; and

WHEREAS, Contractor is agreeable to providing such work product on the terms and conditions hereinafter set forth.

NOW THEREFORE, the parties hereto agree as follows:

1. **RESULTS TO BE ACHIEVED** Subject to the terms and conditions set forth in this Agreement, Contractor shall provide to City the work product described in Exhibit A ("Scope of Work"). Contractor is not authorized to undertake any efforts or incur any costs whatsoever under the terms of this Agreement until receipt of a fully executed Purchase Order from the Finance Department of the City of Saratoga.

2. **TERM** The term of this Agreement commences on **July 1<sup>st</sup>, 2010** and extends through **June 30<sup>th</sup>, 2012** or the completion of the project, whichever occurs first, unless it is extended by written mutual agreement between the parties, provided that the parties retain the right to terminate this Agreement as provided in Exhibit D at all times.

3. **PAYMENT** City shall pay Contractor for work product produced pursuant to this Agreement at the time and in the manner set forth in Exhibit B ("Payment"). The payments specified in Exhibit B shall be the only payments to be made to Contractor in connection with Contractor's completion of the Scope of Work pursuant to this Agreement. Contractor shall submit all billings to City in the manner specified in Exhibit B; or, if no manner is specified in Exhibit B, then according to the usual and customary procedures and practices which Contractor uses for billing clients similar to City.

4. **FACILITIES AND EQUIPMENT** Except as set forth in Exhibit C ("Facilities and Equipment"), Contractor shall, at its sole cost and expense, furnish all facilities and equipment, which may be required for completing the Scope of Work pursuant to this Agreement. City shall furnish to Contractor only the facilities and equipment listed in Exhibit C according to the terms and conditions set forth in Exhibit C.

5. **GENERAL PROVISIONS** City and Contractor agree to and shall abide by the general provisions set forth in Exhibit D ("General Provisions"). In the event of any inconsistency between said general provisions and any other terms or conditions of this Agreement, the other term or condition shall control insofar as it is inconsistent with the General Provisions.

6. **EXHIBITS** All exhibits referred to in this Agreement are attached hereto and are by this reference incorporated herein and made a part of this Agreement.

7. **CONTRACT ADMINISTRATION** This Agreement shall be administered on behalf of City by **Dave Anderson, City Manager** ("Administrator"). The Administrator has complete authority to receive information, interpret and define City's policies consistent with this Agreement, and communicate with Contractor concerning this Agreement. All correspondence and other communications shall be directed to or through the Administrator or his or her designee.

8. **NOTICES** All notices or communication concerning a party's compliance with the terms of this Agreement shall be in writing and may be given either personally, by certified mail, return receipt requested, or by overnight express carrier. The notice shall be deemed to have been given and received on the date delivered in person or the date upon which the postal authority or overnight express carrier indicates that the mailing was delivered to the address of the receiving Party. The Parties shall make good faith efforts to provide advance courtesy notice of any notices or communications hereunder via telefacsimile. However, under no circumstances shall such courtesy notice satisfy the notice requirements set forth above; nor shall lack of such courtesy notice affect the validity of service pursuant to the notice requirement set forth above. Any Party hereto, by giving ten (10) days written notice to the other, may designate any other address as substitution of the address to which the notice or communication shall be given. Notices or communications shall be given to the Parties at the addresses set forth below until specified otherwise in writing:

Notices to Contractor shall be sent to:



Jim Detrick  
President  
Pecle Technologies  
197 East Hamilton Avenue  
Campbell, CA 95008  
Tel: 1-800-233-5006

Notices to City shall be sent to:  
Dave Anderson, City Manager  
City of Saratoga  
13777 Fruitvale Avenue  
Saratoga, CA 95070

With a copy (which copy shall not constitute notice) to:  
City Clerk  
City of Saratoga  
13777 Fruitvale Avenue  
Saratoga, CA 95070


9. **ENTIRE AGREEMENT** This Agreement supersedes any and all agreements, either oral or written, between the parties hereto with respect to Contractor's completion of the Scope of Work on behalf of City and contains all of the covenants and agreements between the parties with respect to the rendering of such services in any manner whatsoever. Each party to this Agreement acknowledges that no representations, inducements, promises or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, which are not embodied herein, and that no other agreement, statement or promise not contained in this Agreement shall


be valid or binding. No amendment, alteration, or variation of the terms of this Agreement shall be valid unless made in writing and signed by the parties hereto.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement.

CITY OF SARATOGA,  
a municipal corporation

CONTRACTOR:  
Peelle Technologies


By:   
Dave Anderson,  
City Manager

By:   
Jim Detrick,  
President

Date: 6/30/10

Date: 6/16/2010

APPROVED AS TO FORM:

By:   
Richard Taylor  
City Attorney

Date: 6/24/10

**Attachments**

Exhibit A --	Scope of Work
Exhibit B --	Contract Payment and Reporting Schedule
Exhibit B-1 --	Rate Schedule
Exhibit C --	Facilities and Equipment
Exhibit D --	General Provisions
Exhibit E --	Insurance Requirements

**EXHIBIT A**  
**SCOPE OF WORK**

Upon the request of the Administrator or his or her designee, the City will require the contractor to perform services which include, but are not necessarily limited to:

Retrieve and transport records identified by the City to the Contractor's facility and convert the records to a laser fiche format at a minimum of 300dpi for documents and 400 dpi for maps and plans.

This will include:

- Document Preparation
- Special handling of older or degraded documents
- Document Scanning at optimal dpi, and settings for letter and legal size, large and extra large formats, microfiche in 16 and ~~32~~ 35mm formats, color and grayscale formats, etc
- Document Indexing: The City will provide explicit index criteria for the images
- OCR-ing of all documents and 'tagging' searchable information onto non-OCR-able scans as directed
- Creation of CD masters and duplicates and delivery of these to the City
- Emergency/urgent retrieval of documents on request by the City
- Return all documents to the City in their original state

**EXHIBIT B**  
**PAYMENT**

1. **TOTAL COMPENSATION** City shall pay Contractor at the rates set forth on the attached rate schedule, Exhibit B-1. The total compensation (including equipment, supply, and expense costs) pursuant to Exhibit A – Scope of Work of this Agreement shall not exceed **One Hundred and Thirty Five Thousand Eight Hundred and Seventy Six (\$135,876)**

2. **INVOICES** Contractor shall submit invoices, not more often than once a month during the term of this Agreement, based on the cost for work performed prior to the invoice date. Hourly Rates schedule is shown on Exhibit B-1. Invoices shall be sent to the City no later than the 15<sup>th</sup> of the month following the month term being invoiced for. Invoices shall contain the following information:

- i. Serial identifications of bills for each City Department, i.e. Invoice No.1 on each individual invoice sheet.
- ii. Reference the pertinent City Department and invoice number on each individual invoice sheet.
- iii. The beginning and ending dates of the billing period on each individual invoice sheet.
- iv. A summary cover sheet containing the total contract amount, the amount of prior billings, the total due this period, and the remaining balance available for all remaining billing periods.

3. **MONTHLY PAYMENTS** City shall make monthly payments, based on such invoices, for satisfactory progress in completion of the Scope of Work.

4. **REIMBURSABLE EXPENSES** There shall be no right to reimbursement of expenses incurred by Contractor except as specified in Exhibit A to this Agreement.

**EXHIBIT B-1**  
**RATE SCHEDULE**

**Fee Schedule**

<b>Service Description</b>	<b>Unit Cost</b>
Document Preparation:	\$20.00/hour
Document Scanning	
Letter and legal-size documents (300 DPI)	
In black & white or color:	\$0.09/image
Large-format documents – maps/plans (400 DPI)	
In black & white:	\$1.25/image
In color:	\$2.75/image
Microfiche Scanning (300 DPI)	
16mm frame format (5-channel jackets):	\$2.00/fiche
35mm frame format (2-channel jackets):	\$1.25/fiche
16+35mm frame format ("combo" jackets):	\$1.75/fiche
Document Indexing:	Included
Optical Character Recognition (OCR):	Included
Emergency / Urgent Retrieval (scan & e-mail on demand):	See above
Special Handling (if necessary):	\$20.00/hour
CD Recording/Labeling (masters and duplicates):	\$10.00/CD
Transportation (pickup & delivery via Pecelle truck):	\$35.00/trip
Document Storage & Destruction	
Storage Fee (3-month maximum period):	Included
Destruction Fee:	\$8.00/box
Credit for documents not properly scanned (rescanned at N/C):	Agreed

Applicable sales tax will be added to all invoices.

**EXHIBIT C**  
**FACILITIES AND EQUIPMENT**

City shall furnish physical facilities such as desks, filing cabinets, and conference space, as may be reasonably necessary for Contractor's use while consulting with City employees and reviewing records and the information in possession of City. The location, quantity, and time of furnishing said physical facilities shall be in the sole discretion of City. In no event shall City be obligated to furnish any facility which may involve incurring any direct expense, including, but not limiting the generality of this exclusion, long-distance telephone or other communication charges, vehicles, and reproduction facilities. Contractor shall not use such services, premises, facilities, supplies or equipment for any purpose other than in the performance of Contractor's obligations under this Agreement.

**EXHIBIT D**  
**GENERAL PROVISIONS**

1.     **INDEPENDENT CONTRACTOR**             At all times during the term of this Agreement, Contractor shall be an independent contractor and shall not be an employee of City. Contractor shall complete the Scope of Work hereunder in accordance with currently approved methods and practices in Contractor's field. City shall have the right to control Contractor only with respect to specifying the results to be obtained from Contractor pursuant to this Agreement. City shall not have the right to control the means by which Contractor accomplishes services rendered pursuant to this Agreement. Likewise, no relationship of employer and employee is created by this Agreement between the City and Contractor or any subcontractor or employee of Contractor. Nothing contained in this Agreement shall be construed as limiting the right of Contractor to engage in Contractor profession separate and apart from this Agreement so long as such activities do not interfere or conflict with the performance by Contractor of the obligations set forth in this Agreement. Interference or conflict will be determined at the sole discretion of the City.

2.     **STANDARD OF PERFORMANCE**     Contractor shall complete the Scope of Work required pursuant to this Agreement in the manner and according to the standards observed by a competent practitioner of the profession in which Contractor is engaged in the geographical area in which Contractor practices its profession. All work product of whatsoever nature which Contractor delivers to City pursuant to this Agreement shall be prepared in a substantial, first class and workmanlike manner and conform to the standards of quality normally observed by a person practicing in Contractor's profession.

3.     **TIME**             Contractor shall devote such time to the Scope of Work pursuant to this Agreement as may be reasonably necessary for satisfactory performance of Contractor's obligations pursuant to this Agreement.

4.     **CONTRACTOR NO AGENT**     Except as City may specify in writing, Contractor shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent. Contractor shall have no authority, express or implied, pursuant to this Agreement to bind City to any obligation whatsoever.

5. **BENEFITS AND TAXES** Contractor shall not have any claim under this Agreement or otherwise against City for seniority, vacation time, vacation pay, sick leave, personal time off, overtime, health insurance, medical care, hospital care, insurance benefits, social security disability, unemployment, workers compensation or employee benefits of any kind. Contractor shall be solely liable for and obligated to pay directly all applicable taxes, including, but not limited to, federal and state income taxes, and in connection therewith Contractor shall indemnify and hold City harmless from any and all liability that City may incur because of Contractor's failure to pay such taxes. City shall have no obligation whatsoever to pay or withhold any taxes on behalf of Contractor.

6. **ASSIGNMENT PROHIBITED** No party to this Agreement may assign any right or obligation pursuant to this Agreement. Any attempted or purported assignment of any right or obligation pursuant to this Agreement shall be void and of no effect. However, with the consent of the City given in writing, Contractor is entitled to subcontract such portions of the work to be performed under this Agreement as may be specified by City.

7. **PERSONNEL**

- a. **Qualifications.** Contractor shall assign only competent personnel to complete the Scope of Work pursuant to this Agreement. In the event that City, in its sole discretion, at any time during the term of this Agreement, desires the removal of any such persons, Contractor shall, immediately upon receiving notice from city of such desire of City, cause the removal of such person or persons.
- b. **Employment Eligibility.** Contractor shall ensure that all employees of Contractor and any subcontractor retained by Contractor in connection with this Agreement have provided the necessary documentation to establish identity and employment eligibility as required by the Immigration Reform and Control Act of 1986. Failure to provide the necessary documentation will result in the termination of the Agreement as required by the Immigration Reform and Control Act of 1986.
- c. **Prevailing Wages.** This is a public works contract within the meaning of Part 7 of Division 2 of the California Labor Code (Sections 1720 et seq.). In accordance with California Labor Code Section 1771, all contractors and subcontractors on this



public work project shall pay not less than current prevailing wage rates as determined by the California Department of Industrial Relations ("DIR"). Pursuant to Section 1773 of the California Labor Code, the City has obtained the general prevailing rate of wages and employer payments for health and welfare, vacation, pension and similar purposes in the City of Saratoga, a copy of which is on file at 13777 Fruitvale Avenue, Saratoga, California at the office of the Public Works Director, and shall be made available for viewing to any interested party upon request.

8. **CONFLICT OF INTEREST**

- a. **In General.** Contractor represents and warrants that, to the best of the Contractor's knowledge and belief, there are no relevant facts or circumstances which could give rise to a conflict of interest on the part of Contractor, or that the Contractor has already disclosed all such relevant information.
- b. **Subsequent Conflict of Interest.** Contractor agrees that if an actual or potential conflict of interest on the part of Contractor is discovered after award, the Contractor will make a full disclosure in writing to the City. This disclosure shall include a description of actions, which the Contractor has taken or proposes to take, after consultation with the City to avoid, mitigate, or neutralize the actual or potential conflict. Within 45 days, the Contractor shall have taken all necessary steps to avoid, mitigate, or neutralize the conflict of interest to the satisfaction of the City.
- c. **Interests of City Officers and Staff.** No officer, member or employee of City and no member of the City Council shall have any pecuniary interest, direct or indirect, in this Agreement or the proceeds thereof. Neither Contractor nor any member of any Contractor's family shall serve on any City board or committee or hold any such position which either by rule, practice or action nominates, recommends, or supervises Contractor's operations or authorizes funding to Contractor.

9. **COMPLIANCE WITH LAWS**

- a. **In General.** Contractor shall take reasonable care to observe and comply with all laws, policies, general rules and regulations established by City and shall comply with the common law and

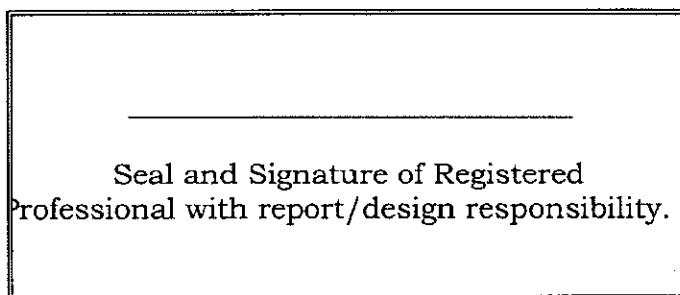
all laws, ordinances, codes and regulations of governmental agencies, (including federal, state, municipal and local governing bodies) applicable to the performance of the Scope of Work hereunder, including, but not limited to, all provisions of the Occupational Safety and Health Act of 1979 as amended.

- b. **Licenses and Permits.** Contractor represents and warrants to City that it has all licenses, permits, qualifications and approvals of whatsoever nature which are legally required for Contractor to practice its profession. Contractor represents and warrants to City that Contractor shall, at its sole cost and expense, keep in effect at all times during the term of this Agreement any licenses, permits, and approvals which are legally required for Contractor to practice its profession. In addition to the foregoing, Contractor shall obtain and maintain during the term hereof a valid City of Saratoga Business License.
- c. **Funding Agency Requirements.** To the extent that this Agreement may be funded by fiscal assistance from another entity, Contractor shall comply with all applicable rules and regulations to which City is bound by the terms of such fiscal assistance program.
- d. **Drug-free Workplace.** Contractor and Contractor's employees and subcontractors shall comply with the City's policy of maintaining a drug-free workplace. Neither Contractor nor Contractor's employees and subcontractors shall unlawfully manufacture, distribute, dispense, possess or use controlled substances, as defined in 21 U.S. Code Section 812, including marijuana, heroin, cocaine, and amphetamines, at any facility, premises or worksite used in any manner in connection with performing services pursuant to this Agreement. If Contractor or any employee or subcontractor of Contractor is convicted or pleads nolo contendere to a criminal drug statute violation occurring at such a facility, premises, or worksite, the Contractor, within five days thereafter, shall notify the City.
- e. **Discrimination Prohibited.** Contractor assures and agrees that Contractor will comply with Title VII of the Civil Rights Act of 1964 and other laws prohibiting discrimination and that no person shall, on the grounds of race, creed, color, disability, sex, sexual orientation, national origin, age, religion, Vietnam era veteran's status, political affiliation, or any other non-merit factors be excluded from participating in, be denied the benefits of, or be otherwise subjected to discrimination under this

Agreement.

10. **DOCUMENTS AND RECORDS**

- a. **Property of City.** All reports, data, maps, models, charts, studies, surveys, photographs, memoranda or other written documents or materials prepared by Contractor pursuant to this Agreement shall become the property of City upon completion of the work to be performed hereunder or upon termination of this Agreement.
- b. **Retention of Records.** Until the expiration of five years after the furnishing of any services pursuant to this Agreement, Contractor shall retain and make available to the City or any party designated by the City, upon written request by City, this Agreement, and such books, documents and records of Contractor (and any books, documents, and records of any subcontractor(s)) that are necessary or convenient for audit purposes to certify the nature and extent of the reasonable cost of services to City.
- c. **Use of Recycled Products.** Contractor shall prepare and submit all reports, written studies and other printed material on recycled paper to the extent it is available at equal or less cost than virgin paper.
- d. **Professional Seal.** Where applicable in the determination of the contract administrator, the first page of a technical report, first page of design specifications, and each page of construction drawings shall be stamped/sealed and signed by the licensed professional responsible for the report/design preparation. The stamp/seal shall be in a block entitled "Seal and Signature of Registered Professional with report/design responsibility" as per the sample below.



11. **CONFIDENTIAL INFORMATION** Contractor shall hold any confidential information received from City in the course of performing this Agreement in trust and confidence and will not reveal such confidential information to any person or entity, either during the term of the Agreement or at any time thereafter. Upon expiration of this Agreement, or termination as provided herein, Contractor shall return materials which contain any confidential information to City. Contractor may keep one copy for its confidential file. For purposes of this paragraph, confidential information is defined as all information disclosed to Contractor which relates to City's past, present, and future activities, as well as activities under this Agreement, which information is not otherwise of public record under California law.

12. **RESPONSIBILITY OF CONTRACTOR** Contractor shall take all responsibility for the work, shall bear all losses and damages directly or indirectly resulting to Contractor, to any subcontractor, to the City, to City officers and employees, or to parties designated by the City, on account of the performance or character of the work, unforeseen difficulties, accidents, occurrences or other causes to the extent predicated on active or passive negligence of the Contractor or of any subcontractor.

13. **INDEMNIFICATION** Contractor and City agree that City, its employees, agents and officials shall, be fully protected from any loss, injury, damage, claim, lawsuit, cost, expense, attorneys fees, litigation costs, defense costs, court costs or any other cost to the extent arising out of or in any way related to the negligent performance of this Agreement. Accordingly, the provisions of this indemnity provision are intended by the parties to be interpreted and construed to provide the fullest protection possible under the law to the City. Contractor acknowledges that City would not enter into this agreement in the absence of the commitment of Contractor to indemnify and protect City as set forth below.

- a. **Indemnity.** To the fullest extent permitted by law, Contractor shall defend, indemnify and hold harmless City, its employees, agents and officials, from any liability, claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs (including, without limitation, costs and fees of litigation) of any kind whatsoever without restriction or limitation, incurred in relation to, as a consequence of or arising out of or in any way attributable actually, allegedly or impliedly, in whole or in part, to the performance of this Agreement. All obligations under this

provision are to be paid by Contractor as they are incurred by the City.

- b. **Limitation on Indemnity.** Without affecting the rights of City under any provision of this agreement or this section, Contractor shall not be required to defend, indemnify and hold harmless City as set forth above for liability attributable to the active negligence, sole negligence, or willful misconduct of City, provided such active negligence, sole negligence, or willful misconduct is determined by agreement between the parties or the findings of a court of competent jurisdiction.
- c. **Scope of Contractor Obligation.** The obligations of Contractor under this or any other provision of this Agreement will not be limited by the provisions of any workers' compensation act or similar act. Contractor expressly waives its statutory immunity under such statutes or laws as to City, its employees and officials.
- d. **Subcontractors.** Contractor agrees to obtain executed indemnity agreements with provisions identical to those set forth here in this section from each and every subcontractor, sub tier contractor or any other person or entity involved by, for, with or on behalf of Contractor in the performance or subject matter of this Agreement. In the event Contractor fails to obtain such indemnity obligations from others as required here, Contractor agrees to be fully responsible according to the terms of this section.
- e. **In General.** Failure of City to monitor compliance with these requirements imposes no additional obligations on City and will in no way act as a waiver of any rights hereunder. This obligation to indemnify and defend City as set forth herein is binding on the successors, assigns, or heirs of Contractor and shall survive the termination of this agreement or this section. For purposes of Section 2782 of the Civil Code the parties hereto recognize and agree that this Agreement is not a construction contract. By execution of this Agreement, Contractor acknowledges and agrees that it has read and understands the provisions hereof and that this paragraph is a material element of consideration. City approval of the insurance contracts required by this Agreement does not relieve the Contractor or subcontractors from liability under this paragraph.

14. **INSURANCE REQUIREMENTS** Contractor shall procure and maintain for the duration of the contract insurance as set forth in Exhibit E. The cost of such insurance shall be included in the

Contractor's bid.

15. **DEFAULT AND REMEDIES**

a. **Events of default.** Each of the following shall constitute an event of default hereunder:

1. Failure to perform any obligation under this Agreement and failure to cure such breach immediately upon receiving notice of such breach, if the breach is such that the City determines the health, welfare, or safety of the public is immediately endangered; or
2. Failure to perform any obligation under this Agreement and failure to cure such breach within fifteen (15) days of receiving notice of such breach, if the breach is such that the City determines that the health, welfare, or safety of the public is not immediately endangered, provided that if the nature of the breach is such that the City determines it will reasonably require more than fifteen (15) days to cure, Contractor shall not be in default if Contractor promptly commences the cure and diligently proceeds to completion of the cure.

b. **Remedies upon default.** Upon any Contractor default, City shall have the right to immediately suspend or terminate the Agreement, seek specific performance or contract with another party to perform this Agreement.

c. **No Waiver.** Failure by City to seek any remedy for any default hereunder shall not constitute a waiver of any other rights hereunder or any right to seek any remedy for any subsequent default.

16. **TERMINATION** Either party may terminate this Agreement with or without cause by providing 10 days notice in writing to the other party. The City may terminate this Agreement at any time without prior notice in the event that Contractor commits a material breach of the terms of this Agreement. Upon termination, this Agreement shall become of no further force or affect whatsoever and each of the parties hereto shall be relieved and discharged here-from, subject to payment for acceptable services rendered prior to the expiration of the notice of termination. Notwithstanding the foregoing, the provisions of this Agreement concerning retention of records, City's rights to material

produced, confidential information, consultant's responsibility, indemnification, insurance, dispute resolution, litigation, and jurisdiction and severability shall survive termination of this Agreement.

17. **DISPUTE RESOLUTION** The parties shall make a good faith effort to settle any dispute or claim arising under this Agreement. If the parties fail to resolve such disputes or claims, they shall submit them to non-binding mediation in California at shared expense of the parties for at least 8 hours of mediation. If mediation does not arrive at a satisfactory result, arbitration, if agreed to by all parties, or litigation may be pursued. In the event any dispute resolution processes are involved, each party shall bear its own costs and attorneys fees.

18. **LITIGATION** In the event that either party brings an action under this agreement for breach or enforcement thereof, the prevailing party in such action shall be entitled to its reasonable attorneys' fees and costs whether or not such action is prosecuted to judgement.

19. **JURISDICTION AND SEVERABILITY** This Agreement shall be administered and interpreted under the laws of the State of California. Jurisdiction of litigation arising from this Agreement shall be in that state and venue shall be in Santa Clara County, California. If any part of this Agreement is found to conflict with applicable laws, such part shall be inoperative, null and void insofar as it conflicts with said laws, but the remainder of this Agreement shall be in full force and effect.

20. **NOTICE OF NON-RENEWAL** Contractor understands and agrees that there is no representation, implication, or understanding that the City will request that work product provided by Contractor under this Agreement be supplemented or continued by Contractor under a new agreement following expiration or termination of this Agreement. Contractor waives all rights or claims to notice or hearing respecting any failure by City to continue to request or retain all or any portion of the work product from Contractor following the expiration or termination of this Agreement.

21. **PARTIES IN INTEREST** This Agreement is entered only for the benefit of the parties executing this Agreement and not for the benefit of any other individual, entity or person.

22. **WAIVER** Neither the acceptance of work or payment for work pursuant to this Agreement shall constitute a waiver of any rights or obligations arising under this Agreement. The failure by the City to enforce any of Contractor's obligations or to exercise City's rights shall in no event be deemed a waiver of the right to do so thereafter.



**EXHIBIT E**  
**INSURANCE**

Please refer to the insurance requirements listed below. Those that have an "X" indicated in the space before the requirement apply to Contractor's Agreement (ignore any not checked).

Contractor shall provide its insurance broker(s)/agent(s) with a copy of these requirements and request that they provide Certificates of Insurance complete with copies of all required endorsements to: Administrative Services Officer, City of Saratoga, 13777 Fruitvale Avenue, Saratoga, CA 95070.

Contractor shall furnish City with copies of original endorsements affecting coverage required by this Exhibit E. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. All endorsements and certificates are to be received and approved by City before work commences. City has the right to require Contractor's insurer to provide complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications.

  X   Commercial General/Business Liability Insurance with coverage as indicated:

- X   \$2,000,000 per occurrence/\$2,000,000 aggregate limits for bodily injury and property damage
- \$ \_\_\_\_\_ per occurrence bodily injury/\$ \_\_\_\_\_ per occurrence property damage
- Coverage for X, C, U hazards MUST be evidenced on the Certificate of Insurance
- If the standard ISO Form wording for "OTHER INSURANCE", or other comparable wording, is not contained in Contractor's liability insurance policy, an endorsement must be provided that said insurance will be primary insurance and any insurance or self-insurance maintained by City, its officers, employees, agents or volunteers shall be in excess of Contractor's insurance and shall not contribute to it.

  X   Auto Liability Insurance with coverage as indicated:

- X   \$2,000,000 combined single limit for bodily injury and property damage

- \_\_\_ \$ \_\_\_\_\_ per person/\$ \_\_\_\_\_ per accident for bodily injury
- \_\_\_ \$ \_\_\_\_\_ per occurrence for property damage
- \_\_\_ \$ 500,000 combined single limit for bodily injury and property damage
- \_\_\_ Garage keepers extra liability endorsement to extend coverage to all vehicles in the care, custody and control of the consultant, regardless of where the vehicles are kept or driven.

X Professional/Errors and Omissions Liability with coverage as indicated:

- X \$1,000,000 per loss/ \$2,000,000 aggregate
- \_\_\_ \$5,000,000 per loss/ \$5,000,000 aggregate

**Contractor must maintain Professional/Errors & Omissions Liability coverage for a period of three years after the expiration of this Agreement. Contractor may satisfy this requirement by renewal of existing coverage or purchase of either prior acts or tail coverage applicable to said three-year period.**

- X Workers' Compensation Insurance
- X Including minimum \$1,000,000 Employer's Liability

**The Employer's Liability policy shall be endorsed to waive any right of subrogation as respects the City, its employees or agents.**

The Contractor makes the following certification, required by section 1861 of the California Labor Code:

I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract

- X Additional Insured Endorsement(s) for Commercial General/Business Liability coverage naming the City of Saratoga, its officers, employees and agents as additional insured.

(NOTE: additional insured language on the Certificate of Insurance is NOT acceptable without a separate endorsement such as Form CG 20 10)

X The Certificate of Insurance MUST provide 30 days notice of cancellation, (10 days notice for non-payment of premium). NOTE: the following words must be crossed out or deleted from the standard cancellation clause: "... endeavor to ..." AND "... but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives."

\_\_\_\_ All subcontractors used must comply with the above requirements except as noted below:

\_\_\_\_\_  
\_\_\_\_\_

As to all of the checked insurance requirements above, the following shall apply:

- a. **Deductibles and Self-Insured Retentions.** Any deductibles or self-insured retentions must be declared to and approved by the City. At the option of the City, either (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officers, officials and employees; or (2) the Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.
- b. **City as Additional Insured.** The City, its officers, officials, employees and volunteers are to be covered as insureds as respects: liability arising out of activities performed by or on behalf of the Contractor; products and completed operations of the Contractor, premises owned, occupied or used by the Contractor, or automobiles owned, leased, hired or borrowed by the Contractor. The coverage shall contain no special limitations on the scope of the protection afforded to the City, its officers, officials, employees or volunteers.
- c. **Other Insurance Provisions.** The policies are to contain, or be endorsed to contain, the following provisions:

1. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its officers, officials, employees or volunteers.
  2. The Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
  3. Coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.
- d. **Acceptability of Insurers.** Insurance is to be placed with insurers with a Bests' rating of no less than A: VII